

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES of AMERICA,

Plaintiff,

Case No. 2:16-cr-20290

v.

HONORABLE STEPHEN J. MURPHY, III

DERRIN ABBOTT,

Defendant.

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**ORDER DENYING DEFENDANT'S  
MOTION TO DISMISS** (document no. 23)

Defendant Derrin Abbott filed a motion to dismiss, alleging a violation of the Speedy Trial Act. Mot., ECF No. 23. In a hearing on the matter, the Court denied the motion. See Minute Entry, October 26, 2016, No ECF number available.

The Sixth Amendment to the U.S. Constitution guarantees that an accused "shall enjoy the right to a speedy and public trial." U.S. Const. amend. VI. The Speedy Trial Act, 18 U.S.C. §§ 3161-3174, states in relevant part that:

In any case in which a plea of not guilty is entered, the trial . . . shall commence within seventy days from the filing date (and making public) of the information or indictment, or from the date the defendant has appeared before a judicial officer of the court in which such charge is pending, whichever date last occurs.

§ 3161(c)(1). The seventy day timeline is not absolute; it is permissible for "periods of delay [to be] excluded . . . in computing the time within which the trial . . . must commence." 18 U.S.C. § 3161(h); *e.g. United States v. Moran*, 998 F.2d 1368, 1370 (6th Cir. 1993). "The defendant bears the burden of proof to show a violation" of the Act. *United States v. Censke*, 449 F. App'x 456, 462 (6th Cir. 2011). "Delays due to continuances granted by the court are excluded from the time within which a trial must start under the Speedy Trial Act

if 'the ends of justice served by taking such action outweigh the best interest of the public and the defendant in a speedy trial.'" *United States v. Stewart*, 628 F.3d 246, 253 (6th Cir. 2010) (quoting 18 U.S.C. § 3161(h)(7)(A)).

As the Court noted during the motion hearing, seventy days have not yet elapsed in Abbott's case. He was indicted on April 21, 2016, see Indict., ECF No. 13, and — as stipulated by Abbott's counsel — the Court held that the time period of June 21, 2016 until November 29, 2016 was excludable time under the Act. See Order, ECF No. 19. Although Abbott argues that he did not consent to this delay, "the Speedy Trial Act does not require a defendant's consent to the continuance in order for a judge to be able to grant a motion in furtherance of the ends of justice." *Stewart*, 628 F.3d at 254 (quotations omitted). Accordingly, the Court will deny the motion.

#### **ORDER**

**WHEREFORE**, it is hereby **ORDERED** that Defendant Abbott's motion to dismiss (document no. 23) is **DENIED WITH PREJUDICE**.

**SO ORDERED.**

s/Stephen J. Murphy, III  
STEPHEN J. MURPHY, III  
United States District Judge

Dated: October 31, 2016

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on October 31, 2016, by electronic and/or ordinary mail.

s/David P. Parker  
Case Manager